APPENDIX A

CONSTITUTIONAL AND STATUTORY PROVISIONS

I. Article IV, Section 1 of the Constitution of the United States of America:

"Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

II. Section 1738 of the Judicial Code and Judiciary, 62 Stat. 947, 28 U.S.C. 1738:

"The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

"The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

"Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

III. Sections 25,003, 25,008, 25,500 and 26,100 of the Corporate Securities Law of the Corporations Code of California, Deering's California Codes:

"25003. 'Company' includes all of the following:

"(a) All domestic and foreign private corporations, associations, syndicates, joint stock companies, and partnerships of every kind.

"(b) Trustees as defined in Section 25004.

"(c) Individuals selling, offering for sale, negotiating for the sale of, or taking subscriptions for, any security of their own issue."

"25008. 'Security' includes all of the following:

"(a) Any stock, including treasury stock; any certificate of interest or participation; any certificate of interest in a profit-sharing agreement; any certificate of interest in an oil, gas, or mining title or lease; any transferable share, investment contract, or beneficial interest in title to property, profits, or earnings.

"(b) Any bond; any debenture; any collateral trust certificate; any note; any evidence of indebtedness, whether interest-bearing or not.

"(c) Any guarantee of a security.

"(d) Any certificate of deposit for a security."

"25500. No company shall sell any security of its own issue, except upon a sale for a delinquent assessment against the security made in accordance with the laws of this State, or offer for sale, negotiate for the sale of, or take subscriptions for any such security, until it has first applied for and secured from the commissioner a permit authorizing it so to do.

"The provisions of this section do not apply to the issue or reclassification of shares of stock in any of the following transactions:

"(a) The issue of shares in a stock split, as defined in Section 115.1;

"(b) The issue of shares in a reverse stock split, as defined in Section 115.2;

"(c) The reclassification of outstanding shares having par value into an equal number of shares of a different par value or into an equal number of shares without par value; or

"(d) The reclassification of outstanding shares without par value into an equal number of shares having par value; provided that, in each such case, (i) such issue or reclassification of shares does not change the proportionate interest of the holders of shares outstanding immediately prior thereto; (ii) no change is made in the rights, preferences, privileges or restrictions on outstanding shares other than such changes as necessarily result from such stock split, reverse stock split or reclassification of shares; (iii) the corporation has only one class of shares outstanding; and (iv) the shares to be outstanding immediately after such stock split, reverse stock split or reclassification will have a par value or, in the case of shares without par value, a stated value of not less than one dollar ($1) per share."

"26100. Every security of its own issue sold or issued by any company without a permit of the commissioner then in effect authorizing the issuance or sale of the security is void. Every security of its own issue sold or issued by a company with the authorization of the commissioner but which has been sold or issued in non-conformity with any provision in the permit authorizing the issuance or sale of the security is void."

IV. Section 2(l) of the Oklahoma Securities Act, Title 71, Oklahoma Statutes 1961, Section 2(l):

"(1) 'Security' means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; pre-organization certificate or subscription; transferable share; investment contract; voting-trust certificate;

certificate of deposit for a security; or, in general, any interest or instrument commonly known as a 'security,' or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. 'Security' does not include any insurance or any endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period, or any oil, gas, or mining title or lease or any certificate of interest or participation, or conveyance in any form, of an interest therein, or in payments out of production under such a title or lease."

APPENDIX B

OPINIONS OF COURTS BELOW

I. Opinion of the United States District Court for the Western District of Oklahoma delivered orally on November 30, 1965 (R. pp. 122-124):

Gentlemen, the evidence here today has been helpful, and I appreciate especially the briefs the parties have furnished me and I have studied them diligently. I spent nearly all of Thanksgiving week on them, and had spent considerable time prior to that, especially in connection with the pretrial of the case.

This is not the easiest type of case, and I have concluded after hearing all this evidence, reading the depositions and examining all the exhibits that there was no actual fraud practiced here by the deceased Morgan against these plaintiffs. I think these intelligent, grown people, went into the matter with their eyes open.

There being no fraud, it brings it down to the point of a determination of the comity law in force, the California Securities Act, which differs from the Act in Oklahoma, and here is the way I see it: There is no question in my mind this is not only the law but it is the right thing in this case. If these people had come in and set the whole deal aside, the James lease, the Lingerfelt lease and the Tiffin lease in Pottawatomie county and put it back in status quo, this Court can't see any justice at all in permitting the parties to take advantage of the Act favorable to them and still retaining the benefits under transactions similar to the ones they seek to rescind. I just can't see any soundness in it under the theory that one who seeks equity must do equity, and therefore, I conclude without any hesitancy that these plaintiffs cannot prevail, notwithstanding the Blue Sky law of California, and

I find that law should not be enforced here because there is no comparable substantive statute law in Oklahoma, and that the California Securities Blue Sky law is contrary to public policy in Oklahoma, and therefore this is one of those cases where the rule of comity should not be used or exercised.

I think at the same time that the defendant has failed to sustain his burden of proof in connection with his cross action in so far as Invoice No. 6-115 is concerned. That is $3,987.14. There was no authorization for that expense to be incurred, and while it may have been necessary I didn't find it necessary for that part of it, and for the balance of the defendant's claim, it is as stipulated and agreed among the parties, and I appreciate that.

There are some other bothersome points in the case, and I want the effective date of my order to be the date it is signed and filed with the clerk.

The question of limitations, I think, is a closed question. In view of the decision of the United States Supreme Court in Huntington versus Attrill, I don't find it is penal and therefore the action is not barred, and there is one further theory under which relief could and should be denied these plaintiffs, and that is, following the law as set down in Robbins vs. Pacific Eastern Corporation, and particularly with reference to the place of the performance of the contract. These wells were to be drilled in Oklahoma. It is true he got his letter agreement out there, signed it and returned it, but all the work to be performed was to be here in Oklahoma, and under that theory we are supposed to give validity to a contract if we can, and not place a construction on it that would make it invalid, and especially under that case this rule of interpretation must be applied by the courts. It is particularly applicable in the present case where the plaintiffs and other stockholders got exactly what they bargained for

where no fraud or imposition has been proved and where they are not *(sic)* trying to recoup their loss by a strained and technical construction of the contract which turned out to be a bad bargain. Oklahoma being the place of the performance of the contract the Oklahoma law should be applied under the doctrine of lex loci solitiones.

The attorneys will prepare the finding of facts and conclusions of law.

II. Opinion of the United States Court of Appeals, Tenth Circuit, filed July 21, 1967, but unreported on date of filing (R. of Court of Appeals p. 4):

The plaintiff-appellants, residents of California, brought this action in the United States District Court for the Western District of Oklahoma, seeking to rescind certain agreements and to recover approximately $180,000 from the defendant-appellee as administratrix of the estate of her deceased husband, Fred Morgan. The administratrix is a resident of Oklahoma, as was her husband before his death. The appellee counterclaimed for expenses which appellants had declined to pay, and obtained judgment therefor.

The trial court found for the appellee, and appellants took this appeal.

The record shows that the appellants and the decedent entered into a number of contracts wherein the decedent assigned to appellants fractional interests in certain oil and gas leases in Oklahoma, Texas, Nebraska, and Colorado, and wherein the appellants agreed to contribute their pro rata share of expenses for drilling wells on the leaseholds. The decedent supervised the drilling, but all the wildcat wells drilled were either dry or fell short of commercial production. Appellants filed suit in the District Court in Oklahoma to rescind the letter agreements and assignments and recover all moneys paid.

As one ground for rescission the appellants alleged that they were fraudulently induced by the decedent to enter into the agreements. However there is substantial evidence in the record to support the trial court's determination that the decedent practiced no fraud on the appellants.

The appellants next assert that the agreements and assignments are voidable at their option because, under California law, the contracts are securities and the law of California permits the buyer of such securities to void the sale if the seller has not registered the security with the state and has not received approval to sell. Decedent did not register the agreements and assignments in California.

The trial court refused to apply the law of California, and concluded, inter alia, that such state regulation of oil and gas transactions like those in the case at bar is contrary to the public policy of Oklahoma. The trial court made no express finding or conclusion that the agreements were securities under California law, but assuming that they are, it is clear that Oklahoma does not consider oil and gas interests as securities and expressly excludes such interests from its securities act. *Compare* Cal. Corp. Code § 25008[1] *with* Okla. Stat. Ann. tit. 71, § 2(1) (1965).[2] The former chairman of the Oklahoma Securities Commission

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[1] Cal. Corp. Code § 25008: "'Security' includes all of the following: (a) Any stock, including treasury stock; any certificate of interest or participation; any certificate of interest in a profit-sharing agreement; any certificate of interest in an oil, gas, or mining title or lease; any transferable share, investment contract, or beneficial interest in title to property, profits, or earnings. . . ."

[2] Okla. Stat. Ann. tit. 71, § 2(1) (1965): ". . . 'Security' does not include . . . any oil, gas, or mining title or lease or any certificate of interest or participation, or conveyance in any form, of an interest therein, or in payments out of production under such a title or lease."

testified that regulation of oil and gas transactions as securities was contrary to the public policy of Oklahoma.

The policy of Oklahoma is not passive, neutral, or unarticulated. The contrariety with California law is expressed in clear statutory language. Appellants argue that the difference between the California and the Oklahoma statutes is an unimportant detail because the basic policy of each state is the regulation of securities. Regulation of securities is undoubtedly the basic policy of the Oklahoma Securities Act, but oil and gas transactions are not securities in Oklahoma. Each state views the letter agreements and assignments in a different context. In California they are securities subject to comprehensive regulatory and remedial legislation unknown to the common law. In Oklahoma the agreements and assignments are regular contracts subject to the general rules of the common law. This difference in treatment or characterization is important.

Appellants argue that the trial court's refusal to apply the law of California offends the full faith and credit clause of the Constitution. In a variety of legal and factual contexts the United States Supreme Court has declared that the command of the full faith and credit clause is not absolute, for the clause does not compel the forum state to subordinate its public policy to the conflicting policy of a sister state. See Carroll v. Lanza, 349 U.S. 408; Watson v. Employers Liability Assur. Corp., 348 U.S. 66; Hughes v. Fetter, 341 U.S. 609; Griffin v. McCoach, 313 U.S. 498; Pacific Employers Ins. Co. v. Industrial Accident Comm'n, 306 U.S. 493. These cases considered together establish that the legitimate interests of the forum state may outweigh the unifying principle embodied in the full faith and credit clause. The Supreme Court in Watson v. Employers Liability Assur. Corp., supra, said:

"That clause does not automatically compel a state to subordinate its own contract laws to the laws of another state in which a contract happens to have been formally executed. Where, as here, a contract affects the people of several states, each may have interests that leave it free to enforce its own contract policies."

We think the interests and policies of California and Oklahoma are antagonistic. California classifies oil and gas interests as securities and gives the buyer of such a security an option to void the sale if the seller has not registered with the state and received approval to sell, an option unknown to the common law. Oklahoma does not classify oil and gas transactions as securities and recognizes no buyer's option to void the sale for the seller's failure to register with the state and receive approval to sell. Registration and approval are alien to the public policy of Oklahoma. Relying on California law, the appellants seek, from a federal court sitting in Oklahoma, a remedy that Oklahoma withholds from its own residents. See Hartness v. Aldens, Inc., 301 F.2d 228 (7th Cir.).

Oklahoma has important contacts with this litigation. Regardless of the classification of the agreements and assignments under California law, the agreements provided that the decedent would drill oil wells on leaseholds in Oklahoma and states other than California. The decedent was a resident of Oklahoma, and Oklahoma has an interest that legitimate contracts made by its residents with residents of other states are not rendered void in Oklahoma courts by enforcing the law of a sister state, whose statutes regard oil and gas transactions in an entirely different context than the law of Oklahoma.

The trial court applied the Oklahoma conflict of laws doctrine, and this is not questioned on appeal. There seems to be no case decided by the Oklahoma

Supreme Court that is quite like the case at bar. In Holder v. Holder, 384 P.2d 663 (Okla. 1963), the Oklahoma court recognized that Oklahoma courts would not apply the law of a sister state if it were contrary to the public policy of Oklahoma. The court in Holder quoted Judge Cardozo's familiar statement in Loucks v. Standard Oil Co., 120 N.E. 198 (N.Y. 1918), that to fail of enforcement in the forum state, the law of the sister state must "violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal." It does not appear that the California law allowing a buyer of an oil and gas security to void the sale for the seller's failure to register and receive sale approval from the state violates a fundamental principle of justice or prevalent conception of good morals. In view of the difference accorded by California and Oklahoma to oil and gas transactions like those in the case at bar, it does appear that application of California law to void the letter agreements and assignments would violate a deep-rooted tradition of the common weal in Oklahoma. See also Hartness v. Aldens, Inc., 301 F.2d 228 (7th Cir.).

AFFIRMED.